

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FELIX PEDRO ARANDA-MEJIA, ) CASE NO. C05-0879-MJP-MAT  
Petitioner, )  
v. ) REPORT AND RECOMMENDATION  
ALBERTO R. GONZALES, et al., )  
Respondents. )

## INTRODUCTION AND SUMMARY CONCLUSION

16 On May 11, 2005, petitioner filed, through counsel, a Petition for Writ of Habeas Corpus  
17 pursuant to 28 U.S.C. § 2241, challenging his final order of removal to Nicaragua. (Dkt. #1).  
18 Initially, petitioner alleged that the Board of Immigration Appeals erred in concluding that he was  
19 not entitled to asylum or withholding of removal, and that he was denied due process due to the  
20 ineffective assistance of his former counsel. (Dkt. #1 at 4-5). However, on May 16, 2005,  
21 respondents filed a motion to transfer the instant case to the United States Court of Appeals for  
22 the Ninth Circuit. The basis of respondents' motion is that such transfer is required by Section  
23 106(c) of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, enacted into law on May  
24 11, 2005. (Dkt. #5 at 1). Petitioner now concedes that transfer is appropriate, and does not  
25 object to respondents' motion to transfer his case to the Ninth Circuit Court of Appeals as a  
26 Petition for Review. (Dkt. #8).

01 Having carefully reviewed the entire record, I recommend that respondents' Motion to  
02 Transfer (Dkt. #5) be GRANTED and this case be transferred to the Ninth Circuit Court of  
03 Appeals as a Petition For Review.

04 BACKGROUND AND PROCEDURAL HISTORY

05 Petitioner Felix Pedro Aranda-Mejia is a native and citizen of Nicaragua. (Dkt. #1 at 2).  
06 On July 3, 1997, he attempted to enter the United States illegally, without admission or parole,  
07 at or near San Ysidro, California, and was detained. (Dkt. #1, Ex. A, p. 9). On July 22, 1997,  
08 respondents issued a Notice to Appear ("NTA"), alleging that petitioner was removable under  
09 Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), because he was present  
10 in the United States without being admitted or paroled. On August 6, 1997, petitioner admitted  
11 the allegations and conceded his removability. *Id.*

12 On October 20, 1997, petitioner filed, *pro se*, a Form I-589, seeking asylum, withholding  
13 of removal, or in the alternative voluntary departure. (Dkt. #1 at 2). On December 9, 1997, the  
14 Immigration Judge ("IJ") denied his applications for asylum, withholding of removal, and  
15 voluntary departure. (Dkt. #1, Ex. A). Petitioner appealed, through counsel, the IJ's decision to  
16 the Board of Immigration Appeals ("BIA"). (Dkt. #1, Ex. B). On December 31, 2002, the BIA  
17 affirmed the IJ's denial of petitioner's applications for asylum and withholding of removal, but  
18 reversed the IJ's denial of voluntary departure and granted petitioner thirty days to voluntarily  
19 depart the United States. (Dkt. #1, Ex. C, p. 34).

20 Petitioner alleges that the BIA's decision was mailed to petitioner's counsel Michael  
21 Johnson-Ortiz, but not to petitioner. Petitioner further alleges that Johnson-Ortiz failed to notify  
22 him of the BIA's decision. Accordingly, petitioner did not know that the BIA had granted  
23 voluntary departure or that he had to voluntarily depart within the time frame set forth in the  
24 BIA's decision. Petitioner also contends that Johnson-Ortiz failed to advise him that he may be  
25 eligible for other rights, including Temporary Protective Status, and protection under the

01 Convention Against Torture. (Dkt. #1 at 3-4).<sup>1</sup>

02 On March 10, 2005, the Bureau of Immigration and Customs Enforcement (“BICE”)  
 03 arrested petitioner at his place of employment in Bellingham, Washington. On May 9, 2005, the  
 04 BICE obtained a provisional passport to return petitioner to Nicaragua pursuant to his removal  
 05 order. (Dkt. #5 at 2).

06 On May 11, 2005, petitioner filed the instant habeas petition (Dkt. #1), along with an  
 07 emergency motion for stay of removal (Dkt. #2). On May 16, 2005, respondents filed an  
 08 opposition to petitioner’s emergency motion for stay of removal and a motion to transfer the case  
 09 to the Ninth Circuit Court of Appeals. (Dkt. #5). On May 24, 2005, petitioner filed a Response  
 10 to Motion to Transfer and Reply on Motion for Stay. (Dkt. #8). The briefing is now complete  
 11 and the motion to transfer is ready for review.

12 DISCUSSION

13 On May 11, 2005, the REAL ID Act was enacted into law. REAL ID Act, Pub. L. No.  
 14 109-13, 119 Stat. 231. Section 106(a) of the REAL ID Act purports to eliminate habeas corpus  
 15 jurisdiction under 28 U.S.C. § 2241 to review final orders of removal, deportation, or exclusion  
 16 entered under the Immigration and Nationality Act. Section 106(b) of the REAL ID Act provides  
 17 that Section 106(a) is retroactive and “shall take effect upon the date of enactment of this division  
 18 and shall apply to cases in which the final administrative order of removal, deportation, or  
 19 exclusion was issued before, on, or after the date of enactment.”

20 Section 106(c) of the REAL ID Act further provides that district courts must transfer any  
 21 pending habeas corpus petitions challenging final administrative orders of removal, deportation,  
 22 or exclusion (or the part of the case that challenges the order of removal, deportation, or  
 23 exclusion) to the court of appeals for the circuit in which a petition for review could have been  
 24 properly filed. The Court of Appeals must then treat the transferred case as if it had been filed  
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26 <sup>1</sup>The Washington State Bar Association admonished Michael Johnson-Ortiz on December  
 15, 2003, and then disbarred him on September 15, 2004. (Dkt. #1, Ex. D).

01 pursuant to a Petition for Review. REAL ID Act § 106(c).

02 Here, petitioner challenges the BIA's final order of removal entered on December 31,  
03 2002. However, the amendments made to the INA by the REAL ID Act appear to eliminate  
04 habeas corpus review of final orders of removal and instead direct that such challenges to final  
05 orders of removal be filed in the appropriate court of appeals via a petition for review. See REAL  
06 ID Act § 106(a). Accordingly, the instant habeas petition should be transferred to the Ninth  
07 Circuit Court of Appeals for resolution as a Petition for Review in accordance with Section 106(c)  
08 of the REAL ID Act.

09 CONCLUSION

10 For the foregoing reasons, I recommend that respondents' Motion to Transfer be granted  
11 and this case be transferred to the Ninth Circuit Court of Appeals as a Petition For Review  
12 pursuant to Section 106(c) of the REAL ID Act. A proposed Order accompanies this Report and  
13 Recommendation.

14 DATED this 25th day of May, 2005.

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16 Mary Alice Theiler  
17 United States Magistrate Judge  
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